Corrections Corporation of America d/b/a Servicios Correccionales De Puerto Rico *and* Asociacion de Miembros de la Policia De Puerto Rico, Petitioner. Case 24–RC–8187

October 28, 2002

NOTICE TO SHOW CAUSE

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

On June 24, 2002, the Employer filed an Informative Motion and Motion Requesting Dismissal of Petition asserting that the Corrections Administration for the Commonwealth of Puerto Rico had announced that, effective August 6, 2002, it was cancelling the management services agreement with the Employer covering the Guayama, Puerto Rico prison facility where the unit employees performed guard services. The Petitioner, in response, filed a Motion Opposing Dismissal of Petition.

On August 16, 2002, the vice administrator of the Corrections Administration of Puerto Rico, Ileana Mattei Latimer, sent a letter to the Board's Regional Office stating in pertinent part:

> I am confirming that the contract between the Public Building Authority (PBA), Corrections Administration (CA) and the Corrections Corporation of America (CCA) to administer a correctional institution in Guayama, on behalf of the CAA, was cancelled due to budgetary constraints, effective August 5, 2002.
>
> Since the 6th of August, the CA administers said institution.

Accordingly, notice is hereby given to all parties to show cause, in writing, filed with the Board in Washington, D.C. on or before November 12, 2002 (with affidavit of service on the parties to this proceeding), why the Employer's motion to dismiss the petition should not be granted on the ground that the Employer no longer employs the employees at issue.[1]

Dated, Washington, D.C. October 28, 2002

William B. Cowen, Member

Michael J. Bartlett, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER LIEBMAN, dissenting.

Before a Notice to Show Cause should issue, the Board first must decide the merits of the Employer's objection to the August 3, 2001 representation election, which the Petitioner won by a vote of 148 to 4.

This case involves a unit of guards employed at a prison in the Commonwealth of Puerto Rico. Pursuant to a contract with the Commonwealth, the Employer, at least until August 2002, ran the prison and employed the guards. As indicated, in an election held August 3, 2001, the guards voted overwhelmingly in favor of representation by the Petitioner.

The Employer timely filed an election objection alleging that the Petitioner was indirectly affiliated with a nonguard union and therefore, under Section 9(b)(3), could not be certified as the unit employees' representative. The hearing officer recommended overruling the Employer's objection. The Employer has excepted to this recommendation and this exception is currently before the Board.

In the meantime, on June 24, 2002, the Employer filed with the Board a motion to dismiss the election petition as moot, asserting that, as of August 6, 2002, it was to lose its contract with the Commonwealth. The Employer further asserted that, as of that date, the unit employees would become public employees beyond the Act's reach and for this reason the Board should dismiss the petition. The Employer's motion, and the Notice to Show Cause, is premature.

Before ruling on the Employer's motion, the Board first must decide the merits of the Employer's election objection. If the objection lacks merit, then the Board may not dismiss the petition as moot. This is so because, if the Petitioner was properly certified, then its status as the guards' exclusive representative, and the Employer's corresponding bargaining obligation, dates back to August 3, 2001. See generally *Mike O'Connor Chevrolet-*

[1] Contrary to the dissent, we conclude that it would be unnecessarily wasteful of the Board's resources to determine the merits of the Employer's election objections at this time. The Employer has averred that the Commonwealth of Puerto Rico has cancelled its contract covering the unit employees and that, therefore, it no longer employs them. The issuance of this Notice to Show Cause gives the Petitioner the opportunity to refute the Employer's assertion regarding the status of the unit employees. Our colleague's reliance on the unit employees' potential right to effects bargaining over their terminations is misplaced in this context where that right would exist only in the event that the Board considers and ultimately overrules the Employer's objections. Given that the Employer has allegedly ceased the relevant operations, that bargaining right is simply too speculative to justify the expenditure of the Board's resources until additional facts are known.

Buick-GMC Co., 209 NLRB 701 (1974), enf. denied on other grounds 512 F.2d 684 (8th Cir. 1975) (employer acts at its peril in taking unilateral actions while its election objections are pending; if the Board ultimately certifies the union, then the employer's unilateral actions violate Sec. 8(a)(5) and (1)). At a minimum, then, the Employer would have a duty to bargain over the effects of the unit employees' permanent layoff in August 2002. See *Hillcrest Furniture Mfg. Co.*, 253 NLRB 72 (1980) (finding, based on *Mike O'Connor Chevrolet*, that employer violated Sec. 8(a)(5) and (1) by unilaterally laying off employees between the union's election victory and the Board's decision overruling the employer's objections and certifying the union); *Clements Wire & Mfg. Co.*, 257 NLRB 1058 (1981) (holding that employer unlawfully failed to consult with union over layoffs occurring between time of election and certification). If, on the other hand, the Employer's objection is meritorious, then the petition arguably may be subject to dismissal. But this just confirms that the Board must assess the merits of the Employer's objection before ruling on its motion to dismiss.

Dated, Washington, D.C. October 28, 2002

Wilma B. Liebman, Member

NATIONAL LABOR RELATIONS BOARD